

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

RECEIVED  
REGIONAL HEARING  
CLERK

IN THE MATTER OF:

Rogers Group, Inc.  
Bloomington, Indiana

Respondent.

) Docket No. CAA-5-2001-001  
)  
)  
) Proceeding to Assess an  
) Administrative Penalty  
) under Section 113(d) of the  
) Clean Air Act,  
) 42 U.S.C. § 7413(d)  
)

Consent Agreement and Final Order

1. Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA), brought this administrative action seeking a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. On December 27, 2000, U.S. EPA filed the complaint in this action against Rogers Group, Inc. (Rogers) for violating regulations approved as part of the federally enforceable Indiana State Implementation Plan (SIP) under Section 110 of the Act, 42 U.S.C. § 7410, and NSPS, Subpart OOO, Standards of Performance for Nonmetallic Mineral Processing Plants at 40 C.F.R. § 60.672(b) at its facility in Bloomington, Indiana. Specifically, the complaint alleged that Rogers:

Count 1 - discharged visible emissions from the Tail of Belt 1 Transfer Point into the atmosphere that exhibited greater than 40 percent opacity in 24

consecutive readings in violation of 326 IAC 5-1 and the Clean Air Act.

Count 2 - discharged visible emissions from the Belt 1 to Belt 2 Transfer Point into the atmosphere that exhibited greater than 40 percent opacity in 24 consecutive readings in violation of 326 IAC 5-1 and the Clean Air Act.

Count 3 - discharged visible emissions from the Drier Baghouse Stack into the atmosphere that exhibited greater than 40 percent opacity in 24 consecutive readings in violation of 326 IAC 5-1 and the Clean Air Act.

Count 4 - discharged visible emissions from the Tail of 3 North Transfer Point into the atmosphere that exhibited greater than 40 percent opacity in 24 consecutive readings in violation of 326 IAC 5-1 and the Clean Air Act.

Count 5 - failed to conduct a performance test on the 50# Sack Bagger within 180 days of startup in violation of 40 C.F.R. § 60.672(b) and the Clean Air Act.

3. On May 1, 2001, Rogers filed an answer, in which it admitted or denied the allegations of the complaint, and requested a hearing, under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2).

4. Based on additional information provided by Rogers, U.S. EPA agrees to drop Count V from the complaint. On October 30, 2001, Complainant filed a motion to withdraw Count V without prejudice.

#### **Stipulations**

5. Rogers admits the jurisdictional allegations in the complaint, and neither admits nor denies the factual allegations in the complaint.

6. Rogers waives its right to contest the allegations in the complaint, and waives its right to appeal under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

7. Rogers certifies that it is complying fully with the Indiana SIP.

8. The parties consent to the terms of this consent agreement and final order (CAFO).

9. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

#### **Civil Penalty**

10. In consideration of Roger's efforts to achieve compliance, new information presented during settlement negotiations and agreement to perform a Supplemental

Environmental Project (SEP), U.S. EPA agrees to mitigate the proposed penalty of \$27,500 to \$4,812.50.

11. Rogers must pay the civil penalty of \$4,812.50 by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

12. Rogers must send the check to:

U.S. Environmental Protection Agency  
Region 5  
P.O. Box 70753  
Chicago, Illinois 60673

13. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (R-19J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Joanna S. Glowacki (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3509

14. This civil penalty is not deductible for federal tax Purposes.

15. If Rogers does not timely pay the civil penalty, or any stipulated penalties due under paragraph 26, below, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

16. Interest will accrue on any overdue amount from the date payment was due at a rate established under 26 U.S.C. § 6621(a)(2). Rogers will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Rogers will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

#### **Supplemental Environmental Project**

17. Rogers must complete a supplemental environmental

project (SEP) designed to protect the environment and public health by replacing the dryer duct to improve air flow and increase the efficiency of the Baghouse operation at its Bloomington, Indiana facility. Rogers must complete the SEP as follows:

a. Rogers must replace the dryer duct no later than **6 months** after the effective date of this CAFO.

b. Rogers must acquire the dryer duct, and expend the costs needed to install the ductwork, as described in Exhibit A of this CAFO.

18. Rogers must spend at least **\$24,595** to purchase and install the equipment.

19. Rogers certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Rogers further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

20. U.S. EPA may inspect the facility at any time to monitor Rogers' compliance with this CAFO's SEP requirements.

21. Rogers must submit a SEP Completion Report to U.S. EPA within **30 days** of installation of the new dryer duct. This report must contain the following information:

a. detailed description of the SEP as completed;

b. description of any operating problems and the actions taken to correct the problems;

c. itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;

d. certification that Rogers has completed the SEP in compliance with this CAFO; and

e. description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

22. Rogers must submit all notices and reports required by this CAFO by first class mail to:

Attn: Compliance Tracker (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

23. In each report that Rogers submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

24. Following receipt of the SEP completion report described in paragraph 21 above, U.S. EPA must notify Rogers in writing that:

a. It has satisfactorily completed the SEP and the SEP report;

b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Rogers 30 days to correct the deficiencies; or

c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 26, below.

25. If U.S. EPA exercises option b. above, Rogers may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Rogers' objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Rogers a written decision on its objection. Rogers will comply with any requirements that U.S. EPA imposes in its decision. If Rogers does not complete the SEP as required by U.S. EPA's decision, Rogers will pay stipulated penalties to the United States under paragraph 26, below.

26. If Rogers violates any requirement of this CAFO relating to the SEP, Rogers must pay stipulated penalties to the United States as follows:

a. Except as provided in subparagraph b, below, if Rogers did not complete the SEP satisfactorily according to this CAFO, Rogers must pay a stipulated penalty of \$24,595.

b. If Rogers did not complete the SEP satisfactorily, but U.S. EPA determines that Rogers: (i) made good faith and timely efforts to complete the SEP; and (ii) certified, with supporting documents, that it spent at least 90 percent of the required amount on the SEP, Rogers will not be liable for any stipulated penalty.

c. If Rogers satisfactorily completed the SEP, but spent less than 90 percent of the required amount on



the SEP, Rogers must pay a stipulated penalty of \$4,919.

d. If Rogers failed to submit timely the SEP Completion Report required by paragraph 21, above, Rogers must pay a stipulated penalty of \$275 for each day after the report was due until it submits the report.

27. U.S. EPA's determinations of whether Rogers satisfactorily completed the SEP and whether it made good faith, timely efforts to complete the SEP will bind Rogers.

28. Rogers must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Rogers will use the method of payment specified in paragraphs 11 through 13, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

29. Any public statement that Rogers makes referring to the SEP must include the following language, "Rogers undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Rogers for violations of the Indiana SIP."

30. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

a. Rogers must notify U.S. EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Roger's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Rogers must take all reasonable actions to avoid or minimize any delay. If Rogers fails to notify U.S. EPA according to this paragraph, Rogers

will not receive an extension of time to complete the SEP.

b. If the parties agree that circumstances beyond the control of Rogers caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.

c. If U.S. EPA does not agree that circumstances beyond the control of Rogers caused or may cause a delay in completing the SEP, U.S. EPA will notify Rogers in writing of its decision and any delays in completing the SEP will not be excused.

d. Rogers has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

#### **General Provisions**

31. This CAFO settles U.S. EPA's claims for civil penalties for the violations alleged in the complaint.

32. Nothing in this CAFO restricts U.S. EPA's authority to seek Rogers' compliance with the Act and other applicable laws and regulations.

33. This CAFO does not affect Rogers' responsibility to comply with the Act and other applicable federal, state and local laws, and regulations.

34. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Rogers' "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

35. The terms of this CAFO bind Rogers, and its successors, and assigns.

36. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

37. Nothing in this CAFO is intended to nor shall be construed to constitute U.S. EPA approval of the equipment installed by Respondent in connection with the SEP under the terms of this Agreement.

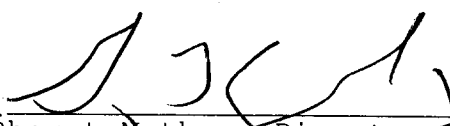
38. Each party agrees to bear its own costs and fees in this action.

39. This CAFO constitutes the entire agreement between the parties.

40. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent.

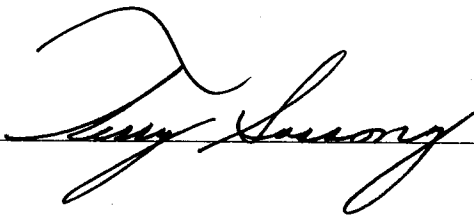
**U.S. Environmental Protection  
Agency, Complainant**

Date: 12/4/01

By:   
Bharat Mathur, Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5 (A-18J)

Rogers Group Inc., Respondent

Date: 11/29/01

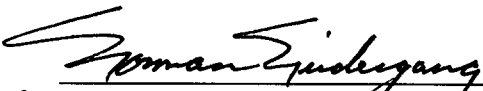
By: 

CONSENT AGREEMENT AND FINAL ORDER  
Rogers Group, Inc.  
Docket No. CAA-5-2001-001

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk.

Date: 12/6/01

  
for Thomas V. Skinner  
Regional Administrator  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

CERTIFICATE OF SERVICE

In the Matter of Rogers Group, Inc.  
Docket No: CAA-5-2001-001

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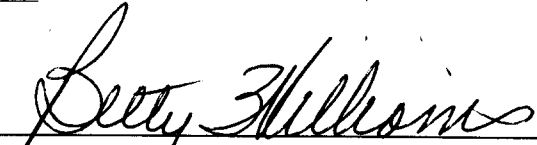
I, Betty Williams, certify that I have delivered the original of the Consent Agreement and Final Order, docket number CAA-5-2001-001 to the Regional Hearing Clerk, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Rogers Group Inc. by placing them in the custody of the United States Postal Service addressed as follows:

Terry Sossong  
Rogers Group, Inc.  
350 South Adams Street  
Bloomington, Indiana 47402

I also certify that a copy of the Consent Agreement and Final Order was sent by First Class Mail to:

David McGiver, Chief  
Air Section  
Office of Enforcement  
Indiana Department of Environmental Management  
100 North Senate, Room 1001  
Indianapolis, Indiana 46205-6015

on the 11<sup>th</sup> day of December, 2001.

  
Betty Williams, Secretary  
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 7099 3/00 00009595 7043